U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31847546

Date: JULY 11, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is paintless dent repair specialist in the automotive industry. He seeks first preference immigrant classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or as someone who initially satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of a beneficiary's achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then it must provide sufficient qualifying documentation demonstrating that the beneficiary meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) also allows a petitioner to submit comparable material if the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner demonstrates that the beneficiary meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner claims to be an individual of extraordinary ability based on his skills and experience as an automotive technician specializing in paintless dent repair (PDR). The Petitioner provided evidence that he currently owns and operates his own business where he provides PDR services to his clientele in the State of Florida.

A. Evidentiary Criteria

The Petitioner does not claim or submit evidence to show that he received a major, internationally recognized award. He must therefore provide evidence showing that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x). The Petitioner initially claimed that he satisfied the elements of the six criteria that are summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the Petitioner;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (viii), Performance in a leading or critical role for distinguished organizations; and
- (ix), Commanding a high salary or remuneration in relation to others.

The Director determined that the Petitioner satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(iii), published material about the Petitioner, and 8 C.F.R. § 204.5(h)(3)(iv), participation as a judge of the

work of others, but that he did not satisfy any of the four remaining criteria. On appeal, the Petitioner contends that he meets all six of the originally listed criteria.

Accordingly, our discussion below will address the remaining four claimed criteria, starting with the criterion at 8 C.F.R. § 204.5(h)(3)(ii), which pertains to membership in professional associations. To meet this criterion, the Petitioner must show that he is a member in an association in his field, and that the association requires outstanding achievements of its members, which is judged by national or international experts in the field.

The Petitioner initially submitted evidence showing that he is a member of the National Alliance of PDR Technicians (NAPDRT). The Director deemed such membership to be insufficient to meet this criterion because the organization's membership guidelines did not establish that outstanding achievements or skills were required as prerequisites for membership.

On appeal, the Petitioner resubmits evidence pertaining to his membership in the NAPDRT and continues to rely on such membership as a basis for meeting this criterion. The Petitioner argues that NAPDRT lists him as a "Qualified PDR Technician" and the only one in [redacted] These assertions, however, do not address the deficiency pointed out in the Director's decision regarding the lack of evidence showing that outstanding achievements or skills are required to become a NAPDRT member. Further, the Petitioner's reference to an unpublished AAO decision concerning a coach in equestrian show jumping is not instructive in this matter, as the decision is unpublished and concerns an individual whose claimed area of expertise is entirely distinct from that of the Petitioner in this matter. *See* 8 C.F.R. § 103.3(c) (stating that only published precedent decisions are binding on USCIS).

The Petitioner also asserts that he is a member of the ARC Inter Association and offers a printout from January 2024 as evidence of his ARC certification. However, the Petitioner does not offer evidence showing when he became an ARC member, nor does he demonstrate that he was a member in March 2022 when this petition was filed. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts."). Given the cited deficiencies, the Petitioner has not established that he satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

Next, we will address the Petitioner's claim that he satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(v), which requires evidence of the Petitioner's original contributions of major significance in his field.

In the denial, the Director acknowledged the Petitioner's submission of recommendation letters and advisory opinions, listing the names of seven individuals who submitted written testimonials on the Petitioner's behalf. However, the Director determined that while the letters discuss the Petitioner's knowledge of PDR work and compliment him on his skills and expertise, they did not specify any significant contributions the Petitioner made to the PDR landscape. The Director also noted that beyond the letters of recommendation the Petitioner did not provide objective evidence, such as published material, patents, or copyright material, to support the claim that he made original contributions in his field.

On appeal, the Petitioner broadly references, without specifying, an "original development" that he claims was of major significance and "had specific effects on the field." He also claims that the "original development" was the subject of "widespread commentary" and is "considered important by peers." The Petitioner lists previously submitted opinion and recommendation letters as proof that he satisfied this criterion.

However, none of the Petitioner's submitted testimonials or expert opinion letters specifically identify his claimed contribution, nor does the Petitioner document the claimed contribution's impact on the automotive field of PDR. Rather, the submissions mostly include personal experiences with the Petitioner, highlighting his skills as a PDR technician and often stating how the Petitioner contributed to a specific business. But contributions that benefit a specific business or individual client do not establish that the Petitioner made original contributions that broadly impact his field. For instance, on appeal the Petitioner lists and provides excerpts from several opinion letters, including letters from: [redacted] of [redacted] who discussed a protection program that his dealership offered to purchasers of the [redacted] vehicles; [redacted] who discussed the Petitioner's work at Mr. [redacted] collision repair business; [redacted] of [redacted][1] who referred to the Petitioner's "original contributions" and "unique approach" involving "skillfully adapted traditional tools and techniques"; and [redacted][2] who worked in various management positions at [redacted] and [redacted] and discussed his interaction with Petitioner when the Petitioner repaired Mr. [redacted] rental vehicle using the PDR approach. While these testimonials describe the Petitioner as a skilled PDR technician and discuss how he contributed to their respective businesses, they do not describe Petitioner's specific approach or state how he adapted the PDR tools and techniques. As such, they do not establish that the Petitioner's approach and adaptations resulted in significant contributions to the PDR industry.

Likewise, the advisory opinions of [redacted] an associate professor at [redacted] mechanical engineering department, and [redacted] an associate professor of biomedical industrial and systems engineering at [redacted], also highlight the Petitioner's experience and skills in automotive body repair but neither discusses how the Petitioner's contributions are original and significant in the field of automotive body repair. We also question the reliability of Dr. [redacted] opinion given his unexplained and irrelevant references to the Petitioner as a "seasoned Strength and Conditioning Coach in the United States" with "expertise" in the area of health science and strength training. Neither the Petitioner nor any of the other supporting documents corroborate these references which do not support the current petition.

Ultimately, given the deficiencies discussed above, the Petitioner has not established that he satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(v).

[1] The record shows that the correct spelling of this individual's surname is as listed above, rather than the Petitioner's iteration, which listed the surname as [redacted]

[2] For the record, we note that there are several anomalies concerning the name and spelling of this individual whose testimonial statement contains two different iterations of his last name. The letter initially lists [redacted] in the introductory portion of the letter but in the space directly below the signature line the name was written as [redacted] The Petitioner offered a third iteration, listing this individual as [redacted]

Now we turn to the Petitioner's claim that he satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(viii), which requires evidence that the Petitioner performed in a leading or critical role for organizations with a distinguished reputation.

In addressing this criterion, the Director acknowledged the Petitioner's submission of a letter from the mayor of [redacted] Florida as well as letters from individuals who work in the automotive industry and are familiar with the Petitioner's work. However, the Director determined that the evidence did not establish that the Petitioner has held a role critical or leading in an organization with a distinguished reputation.

On appeal, the Petitioner asserts that he demonstrated his critical or leading role by documenting his specific achievements and their "effects on the overall organization."

Although the record contains evidence concerning the Petitioner's employment with [redacted] and [redacted] such evidence does not establish that any one of the positions held with the listed entities met all the elements of the criterion at 8 C.F.R. § 204.5(h)(3)(viii). First, regarding the Petitioner's employment with [redacted] the record contains an employment letter from the entity's proprietor who listed the Petitioner's job duties as a PDR instructor and stated that the Petitioner's "teaching skills made him an important asset and prominent figure with the company." To establish that the Petitioner held or holds a leading role, we look for evidence that he was "a leader within the organization or establishment or a division or department thereof." 6 USCIS Policy Manual, F.2(B)(1), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2. To establish that the Petitioner's role was or is critical, we look for evidence that he "contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment." *Id.* The Petitioner has not offered evidence that his employment as an instructor at [redacted] meets either set of the listed requirements.

And notwithstanding the Petitioner's ownership interest and thus his leading or critical roles at the [redacted] in Brazil and [redacted] in the United States, the record lacks sufficient evidence that either is an entity with a distinguished reputation. The Petitioner provided a letter from the mayor of [redacted] Florida, who referred to the city's "thriving automotive industry" and broadly stated that [redacted] "contributed significantly to the overall economic well-being of [redacted] Florida" and "earned a reputation as an extremely distinguished establishment within [redacted] PDR industry." However, these broad claims were not supported by specific information pertaining to relevant factors, such as the scale of the [redacted] customer base, evidence of significant funding, or any relevant media coverage the business may have received. *See id.* And while the Petitioner discussed his role and job duties at the [redacted] in Brazil, he neither claimed nor offered evidence to show that the entity had a distinguished reputation.

The Petitioner also highlights several previously submitted testimonial letters that he claims serve as evidence of his leading or critical role in an organization with a distinguished reputation. However, we note that the USCIS Policy Manual specifically states that, "Evidence of experience must consist

of letters from employers." *6 USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual; *see also* 8 C.F.R. § 204.5(g)(1).

Here, most of the testimonials concerning the Petitioner's professional experience did not originate from former employers or trainers, but rather from businesses that used the Petitioner's dent repair services in some other capacity that was not specified. For instance, the letter from [redacted] the used cars director at the [redacted] in Florida, states that the Petitioner spearheaded a project called "Dent Away at [redacted] and asserts that the Petitioner assumed a "critical role as the creator, implementer, and leader of this project." However, Mr. [redacted] discussed the Petitioner in broad terms, stating that he specialized "in handling large-size dents" which he claimed set the Petitioner apart "compared to all other professionals." He did not specifically list the Beneficiary's duties or indicate that the Petitioner was employed by [redacted] organization, nor did the Petitioner claim or offer evidence to show that the [redacted], where he provided his services, is an organization with a distinguished organization. Likewise, the Petitioner provided letters from several business owners and operators of businesses that deal in auto body repair, all discussing their prior encounters with the Petitioner in his capacity as a PDR technician.[3] These letters, however, discuss work completed, but do not demonstrate that the Petitioner performed in a leading or critical role for an organization with a distinguished reputation. And despite highlighting the Petitioner's skills and the quality of his work, the letters do not indicate that the Petitioner was an employee of the said businesses, nor does the Petitioner's résumé list these businesses as former employers.

In light of the deficiencies described above, the Petitioner has not established that he satisfies the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

Finally, we will address the criterion at 8 C.F.R. § 204.5(h)(3)(ix), which requires evidence that the Petitioner commanded a high salary or other remuneration relative to others in the field. In denying the petition, the Director questioned the relevance of evidence pertaining to salaries of automotive technicians, noting the distinction between automotive technicians and the Petitioner's job as a PDR technician. The Director also determined that the Petitioner's U.S. business earnings are not comparable to the salary of a PDR technician.

The Petitioner disputes the Director's findings and offers the legal opinion of an attorney in Brazil, who discusses Brazil's occupation classifications and explains why the occupation codes for a tinsmith and an automotive repair technician, respectively, are applicable to a PDR technician. The Petitioner also provides comparative salary data for dent repair technicians in the United States, listing data from ZipRecruiter, which shows average salaries for PDR technicians in the State of Florida, and from Dent Wizard, which also shows salaries for PDR technicians but does not specify a locality. Regardless, unlike the comparative data pertaining to employees who provide auto body repair services, the Petitioner in this instance is and has been the proprietor of the businesses where he has provided services of a PDR technician. As such, it is likely that the Petitioner's earnings as a business owner reflect not only time devoted to PDR services, but also includes time spent on administrative and business management tasks that would typically be required of a business owner. Because the Petitioner has not offered evidence establishing the salary he earned as a PDR technician, as opposed

[3] The record includes letters from owners of the [redacted] and [redacted], as well as a letter from the president of [redacted] and a letter from an [redacted]

to a proprietor of a business that provides PDR services, he has not adequately demonstrated that he has commanded a high salary relative to others in his field. In light of the evidentiary deficiency described herein, the Petitioner has not established that he satisfies the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

III. CONCLUSION

The Petitioner has not shown that he met either a one-time award, or three of ten initial criteria. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); see also section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that he is one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.